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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

In re J.T.-C., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.C. et al.,

Defendants and  
Appellants.

B270994

(Los Angeles County  
Super. Ct. No. CK95388)

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Reversed.

Pamela Deavours, under appointment by the Court of Appeal, for Defendants and Appellants.

No appearance by Plaintiff and Respondent.

Children's Rights Project, Martha Matthews, Public Counsel, for J.T.-C.

\* \* \* \* \*

This is an appeal from the juvenile court's order that the Los Angeles County Department of Children and Family Services (Department) continue efforts to arrange monitored visits in a therapeutic setting between a 14-year-old dependent boy J.T.-C. and his 13-year-old nondependent sister T.T.-C., over the objections of the younger sister and her parents. The parents have brought the appeal, and the Department filed a letter brief stating it would not file a respondent's brief countering mothers' arguments on appeal. J.T.-C. has filed a respondent's brief in support of the court's order. We find the juvenile court abused its discretion and reverse the order.

### **BACKGROUND**

The parents are two mothers who adopted biological siblings J.T.-C. and T.T.-C. in Colorado when they were toddlers. J.T.-C. was 10 years old when the family came to the attention of the Department in February 2012. Law enforcement officers had transported J.T.-C. to Harbor-UCLA Medical Center because he threatened to stab his younger sister and his parents in their sleep. A social worker at Harbor-UCLA reported to the Department that J.T.-C.'s parents did not want to take him home because they were afraid of him. Before this, J.T.-C. had been hospitalized three times at psychiatric hospitals. In March 2012, J.T.-C. was placed in a group home where he received residential treatment. In September 2012, J.T.-C. was detained and ordered suitably placed.

When interviewed in September 2012 by a social worker for the jurisdiction/disposition report, J.T.-C. said he is "a danger to my sister." He said, "I feel like I'm going to do something to my sister. [One of my mothers] thought I would hurt my sister." When asked what he meant by that, J.T.-C. said, "Do what my old parents used to teach me." The Department reported that

J.T.-C.'s biological parents had exposed him to explicit sexual acts, including his birth father raping his birth mother in his presence.

The mothers described J.T.-C.'s troubling behaviors to the social worker, including "threatening to kill the family, hoarding food and weapons in his room, attempting to stab the dog with skewers, attempting to have the dog give him fellatio, jumping off the second story balcony, and attempting to jump again after his [broken] leg healed." Additionally, the mothers discussed his troubling sexualized behaviors, including "frequent masturbation with objects/stuffed animals/pillows, his ability to masturbate without touching himself (thereby fooling teachers into thinking he is just rocking in his seat), his attempts to 'feel up' his mothers when hugging, etc." One of his mothers told the social worker that after the detention hearing, J.T.-C. handed her the teddy bear he had been given in court, saying, "Here you go; you know what I will do with it."

In the jurisdiction/disposition report, J.T.-C.'s parents are described as having been "proactive in seeking help for [J.T.-C.] for a number of years," including four years of therapy and weekly family therapy.

While in group home placement, J.T.-C. consistently told Department social workers that he did not want to return home to his mothers. His occasional visits with them did not go well. J.T.-C. eventually adjusted well in group home placement and in September 2015, he was placed with a prospective adoptive parent. Between October 2015 and January 2016, J.T.-C. received weekly individual counseling. His counselor also met with his foster parent "to discuss treatment progress and provide behavioral management strategies." His counselor told the social worker in January 2016 that J.T.-C. "has shown progress towards

decreasing his maladaptive behaviors including but not limited to: defiance, hyperactivity and poor social skills.”

There is no indication in the record that J.T.-C. saw or had contact with his sister during the three years he was in foster care.

J.T.-C. told a Department social worker in September 2015 that he recently located one of his mothers through her real estate website and later sent her a text message expressing his anger over the lack of sibling visitation. The October 2015 status review report states, “[J.T.-C.] continues to report that he does not want any visitation with his adoptive mothers, and wishes to close this chapter in his life. However, he stated that he feels he has the right to have sibling visitation with [T.T.-C.], as she is the only family he has. [J.T.-C.] does not have any contact with his biological parents or possible family in the state of Colorado.”

After the social worker made several attempts to contact the mothers, one of the mothers contacted the social worker to report that she and her wife would not allow sibling visitation because they believed J.T.-C. would intentionally harm T.T.-C. One of his mothers suggested that J.T.-C. have sibling visitation with her adult children. However, the Department believed that was not feasible because the adult children lived on the east coast. The Department also reported that J.T.-C. had not seen mother’s adult children in nearly three years and had not maintained consistent contact with them.

At the status review hearing in October 2015, J.T.-C.’s counsel brought to the attention of the court that his mothers opposed sibling visitation out of fear he would hurt his sister. Nonetheless, J.T.-C.’s counsel asked the court to make a sibling visitation order. The court ordered the Department to speak with J.T.-C.’s therapist, and with his sister, T.T.-C., about visits.

In a last minute information report filed in November 2015, the Department told the court it was too soon for J.T.-C.'s therapist to make a recommendation about whether sibling visitation would be appropriate. The court set a January 2016 hearing as a contest over sibling visitation, and ordered the Department to interview T.T.-C., not in the family home. When J.T.-C.'s counsel asserted the Department should also interview him, the court responded, "Well I know he wants visits. So that is not really an issue. [¶] The issue is whether [T.T.-C.] wants visits, whether the therapist believes it's appropriate and what the mothers want."

The last minute information report for the January 2016 contested hearing advised that J.T.-C.'s therapist remained unable to make a recommendation: "[I]t is not within the scope of her practice to recommend if sibling visits are appropriate." Counsel for one of the mothers advised the court that the Department had never asked to speak with T.T.-C. The court continued the contested hearing due to the illness of counsel and once again ordered the Department to interview T.T.-C., not in the family home.

On January 11, 2016, a Department social worker met with J.T.-C.'s mothers in their home to discuss sibling visitation. "Both mothers stated that they were opposed to sibling visitation, as [T.T.-C.] also receives mental health services to address various issues. Further, they expressed concern that [J.T.-C.] will intentionally inflict harm onto [T.T.-C.]" The mothers gave the social worker the contact information for T.T.-C.'s therapist and psychiatrist. They requested that T.T.-C.'s therapist be present during the social worker's interview with T.T.-C. There is no indication in the record that the Department ever attempted to contact either T.T.-C.'s therapist or her psychiatrist.

One of the mothers sent the social worker a letter from T.T.-C.'s therapist, a licensed clinical psychologist, dated January 18, 2016, which the Department provided to the court. In the letter, the therapist reported that she had seen T.T.-C. in weekly therapy between August 7, 2014 and December 29, 2014. The psychologist stated that T.T.-C. had been diagnosed as having Autism Spectrum Disorder (previously called Asperger Syndrome). The psychologist saw T.T.-C. on January 14, 2016 and concluded that diagnosis remained valid. The psychologist referred to the October 2015 text message that J.T.-C. had sent to one of his mothers expressing hostility toward her, and said that, "any similar venting of rage at the family members would not be in [T.T.-C.'s] best interest and could be very upsetting to her, given her tenuous emotional state."

The social worker interviewed T.T.-C. in a counseling room at her school on January 27, 2016. The interview was arranged by the school principal, with the mothers' permission. The social worker stated she "was informed that she could not interview [T.T.-C.] alone, and [T.T.-C.'s] therapist must be present." The social worker reported the following exchange between her and T.T.-C. "Per [T.T.-C.], 'I am concerned for my personal safety because my brother said he would kill my parents a few years ago.' The undersigned [social worker] stated that if she feels comfortable, [T.T.-C.] can have monitored contact through the telephone, written letters, text messages, or face-to-face. [The social worker] then observed [T.T.-C.] to become disengaged and dissociative, as evidenced by her covering her face with her sweatshirt hood and no longer verbally responding to questions." The social worker concluded her report by stating it appeared to her that she "was unable to obtain a genuine response from [T.T.-C.]. Her response appeared to be coached or rehearsed, based on

the formal and [sic] body language she used, which has not been typical of other similarly aged children interviewed by the undersigned.”

At the contested hearing held February 2, 2016, counsel for one of the mothers pointed out that T.T.-C. had been diagnosed with Asperger Syndrome, and her therapist confirmed the diagnosis was still valid when the therapist saw T.T.-C. only two weeks before the contested hearing. Counsel argued “the behavior that the child is described to have during the interview, is not something that is uncommon with someone who has been diagnosed with this condition. [¶] I think the court needs to pay attention to what [T.T.-C.] is saying. She does not want to see her brother. She has concerns with what he -- statements he has made in the past to her and I think to force [T.T.-C.] to have contact with her brother, just because we’re trying to allow him to have some kind of connection to his biological roots does not seem fair.”

The Department no longer recommended that the court order sibling visitation. Instead, the Department asked the court to continue to assess sibling visitation in light of the mothers’ continued objections.

The court found, “The court makes special consideration for siblings. In fact, the sibling bond is one of the reasons that parental rights should not be terminated. And although -- the concern I have is there is a lot of discussion about the danger to [T.T.-C.], but I’m not really sure what the danger to [T.T.-C.] is. It’s not my view that the Department should drag her into a meeting with [J.T.-C.], but I do note that [J.T.-C.] is reaching out to family. His mothers have not been, in his view, responsive. He’s in a way, ready to move on to a different chapter in his life. He wants to maintain contact with his biological sister. [¶] The

court has a concern that it does appear to the court that [T.T.-C.] is being coached because there is a lot of discussion about the social worker [sic] does not have an opportunity to interview [T.T.-C.], just [T.T.-C.] and the social worker. [¶] So I am going to authorize the Department to continue their efforts.”

At the next hearing on March 15, 2016, the court terminated the mothers’ parental rights to J.T.-C. The mothers have not appealed the termination of their parental rights.

### **DISCUSSION**

The court ordered sibling visitation pursuant to Welfare and Institutions Code section 388, subdivision (b). Subdivision (b)(2) and (3) provides: “(2) A child or nonminor dependent who is a dependent of the juvenile court may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is in the physical custody of a common legal or biological parent, and may request visitation with the nondependent sibling in parental custody. [¶] (3) Pursuant to subdivision (b) of Section 16002, a request for sibling visitation may be granted unless it is determined by the court that sibling visitation is contrary to the safety and well-being of any of the siblings.” The statutory provision is a recent amendment which became effective in January 2015.

The record here does not indicate that J.T.-C. filed a petition pursuant to section 388, subdivision (b), but only made an oral request citing the new statutory provision.

Our standard of review is abuse of discretion. (*In re Hector A.* (2005) 125 Cal.App.4th 783, 798 [“A petition under section 388, subdivision (a) ‘is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.’ ”]; accord, *In*



*re Jasmon O.* (1994) 8 Cal.4th 398, 415.) “We see no reason why the same standard of review should not apply to a petition under subdivision (b).” (*In re Hector A.*, at p. 798.)

The evidence before the court demonstrated that J.T.-C. and T.T.-C. had had little or no contact since J.T.-C.’s detention in 2012, and more importantly, demonstrated that visitation between J.T.-C. and T.T.-C. is contrary to the safety and well-being of T.T.-C. There was no evidence that sibling visitation would be good for T.T.-C.’s safety and well-being. When the court set the contested hearing on sibling visitation, the court identified the issues as whether T.T.-C. wanted visits, whether the therapists believed it was appropriate, and what the mothers wanted. At the contested hearing, it was undisputed that T.T.-C. did not want sibling visitation. J.T.-C.’s therapist could not opine that sibling visitation was appropriate. T.T.-C.’s therapist opined visitation was contrary to T.T.-C.’s safety and well-being. The mothers were adamantly opposed to sibling visitation.

The court abused its discretion by ordering the Department to continue to pursue sibling visitation solely because J.T.-C. wanted it, and because the court believed the sibling bond to be so important to protect that it “is one of the reasons that parental rights should not be terminated.” Yet, at the time the court made the order for sibling visitation, J.T.-C.’s permanent plan was termination of the parental rights that preserved the sibling relationship, and the court terminated parental rights only six weeks after ordering the sibling visitation.

The court accepted the opinion of the social worker that T.T.-C.’s behavior when interviewed at school in the presence of her therapist -- withdrawing in silence into her hoodie -- indicated that she had been coached. The more reasonable inference to be drawn is that T.T.-C.’s behavior was that of a

child with Asperger Syndrome, reacting with fear and alarm to the social worker pressuring her to agree to visits despite her statement that was not what she wanted. It would be extremely difficult for any parent to coach a child to use the defensive tactic of withdrawing like a turtle into her shell. Even if T.T.-C. had been coached to do so, that would not support an inference that there was no risk to T.T.-C.'s safety and well-being for her to visit with J.T.-C. J.T.-C. argues there was no evidence of a present risk that he would cause *physical* harm to his sister. That is not the sole determinative factor as to whether visitation was in T.T.-C.'s best interest. We are not persuaded by J.T.-C.'s other arguments in favor of the court's visitation order.

We need not consider mothers' other contentions on appeal. We will not consider mothers' constitutional challenge to the statute because the argument was not made in the trial court, and we do not reach constitutional questions if an appeal may be resolved on other grounds.

#### **DISPOSITION**

The February 2, 2016 order that the Department continue efforts to arrange visitation between J.T.-C. and T.T.-C. is reversed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.